

701—107.3(422B) Transactions subject to and excluded from local option sales tax.

107.3(1) Sales of tangible personal property. The local option sales tax is imposed upon the gross receipts from “sales” of tangible personal property which occur within that portion of a county where a tax is imposed. There is no local option use tax. The taxable event which determines where a sale occurs is “delivery” of the tangible personal property pursuant to contract for sale. If “delivery” occurs within a county, a sale has occurred there, and local option sales tax may be due. If delivery has not occurred within a county, local option sales tax is not due. Whether the contract for sale becomes binding or title passes within the county is irrelevant. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). Delivery usually occurs when the seller of tangible personal property transfers physical possession of the property to the buyer. In most instances, this transfer takes place at the seller’s place of business. However, if the seller transfers the property to the buyer from the seller’s own vehicle, then the transfer usually takes place at the buyer’s residence or place of business. Finally, if the seller transfers the property to a common carrier or the United States Postal Service for subsequent transport to the buyer, then “delivery” of the property occurs at the time and place where the seller transfers possession of the property to the postal service or the common carrier.

EXAMPLE 1. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Mr. Edwards lives in Polk County and visits Smith’s Furniture Storeroom also located in Polk County. Mr. Edwards enters into a contract to purchase furniture. Smith’s Furniture Storeroom transports the furniture to a common carrier located in Polk County, who in turn transports it to Mr. Edwards’ residence in Polk County. Local option sales tax is imposed since the delivery, and therefore the sale of the tangible personal property, occurred in a taxing jurisdiction. “Delivery” of the furniture occurred when the seller transferred physical possession of the furniture to the common carrier.

EXAMPLE 2. Assume that the whole of Polk County has enacted a local option sales tax and Jasper County has not. Mr. Jones, from Jasper County, comes to Smith’s Furniture Showroom located in Polk County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. The furniture which has been purchased is placed on a Smith’s Furniture Showroom truck and transported to Mr. Jones’ home in Jasper County. “Delivery” of the furniture has occurred in Jasper County at the buyer’s residence because that is where Smith’s Furniture Showroom (the seller) transferred physical possession of the furniture to Mr. Jones (the buyer) under their contract of sale. Because delivery has occurred within Jasper County, no Polk County local option sales tax will be collected on the transaction.

EXAMPLE 3. Assume the same factual circumstances as exist in the previous example except that Mr. Jones has driven from Jasper County to Smith’s Furniture Showroom in a pickup truck and the furniture which Mr. Jones has contracted to buy is transferred onto his truck at the Smith’s Furniture Showroom loading ramp. In this example, “delivery,” and thus the sale of the furniture, has taken place in Polk County because that is where the seller transferred physical possession of the furniture to the buyer. Since delivery occurred in Polk County, Polk County local option sales tax would be due upon the gross receipts of the sale.

EXAMPLE 4. Again, assume that the whole of Polk County has enacted a local option sales tax. Again, assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson’s Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson’s Furniture House transports the furniture in its own truck from Newton to Ms. Wilson’s home in Des Moines. “Delivery” of the furniture has occurred at Ms. Wilson’s residence in Polk County because that is where physical possession of the furniture passed from the seller to the buyer. Since delivery has occurred within Polk County, the sale has occurred there, and the gross receipts of the sale are subject to Polk County’s local option sales tax. Jackson’s Furniture House is obligated to collect the Polk County local option sales tax and to remit that tax to the department of revenue.

EXAMPLE 5. Assume the same circumstances as in Example 4 except that Ms. Wilson has driven to Jackson’s Furniture House in Newton in a pickup truck. The furniture is loaded into her pickup truck from the Jackson’s Furniture House loading dock. In this situation delivery has occurred at the seller’s loading dock outside Polk County; therefore, no obligation to pay Polk County local option sales tax exists with regard to the gross receipts of the sale.

107.3(2) *Taxation of sales of tangible personal property moved by carrier with and without the use of “F.O.B.” or a similar term.*

a. Ordinarily, property “sold” in a local option sales tax jurisdiction is subject to that jurisdiction’s tax. Property moved into or out of a local option sales tax jurisdiction by common carrier is “sold” when the seller transfers physical possession of the property to a carrier for shipment to a buyer unless the buyer and seller indicate their intent that the sale will occur elsewhere by use of the term F.O.B. or of a phrase similar to F.O.B. See Iowa Code section 554.2504. Use of an F.O.B. point located at a place other than that where a seller transfers possession of goods to a carrier usually indicates that the buyer and seller have agreed that sale of the goods will occur at the F.O.B. point. See *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). In the following examples, assume that Dubuque County has enacted a local option sales tax and Polk County has not.

EXAMPLE A. Assume that Company A is located in Dubuque County and Customer B is located in Des Moines, Iowa, in Polk County. Customer B orders a load of office furniture from Company A. A and B agree that A will secure a common carrier to transport the office furniture to B. A secures the services of Dubuque Cartage Co., which takes possession of the furniture in Dubuque, Iowa, and transports it to Des Moines. There is no mention of the term F.O.B. or any other indication of a delivery point in the contract of sale between A and B. In this case, sale of the furniture was in Dubuque County because that is where the seller of the furniture surrendered physical possession of it to the carrier. A is obligated to collect from B the local option sales tax imposed by Dubuque County.

EXAMPLE B. Assume the same facts as in Example A except that under the terms of the contract of sale delivery of the office furniture is “F.O.B. Des Moines.” In this case, sale of the office furniture has occurred in Des Moines in Polk County and not in Dubuque County because the buyer and seller have, with the use of the term “F.O.B. Des Moines,” agreed that the sale will take place there. Because of this, A cannot collect from B local option sales tax imposed by Dubuque County.

EXAMPLE C. Mr. Jones, a resident of Polk County, drives to Smith’s Furniture Showroom located in Dubuque County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. Delivery of the furniture is to be “F.O.B. Dubuque.” Smith’s Furniture Showroom transfers the furniture to a common carrier in Dubuque who transports the furniture to Mr. Jones in Polk County. In this example, sale of the furniture has occurred in Dubuque County because Mr. Jones and Smith’s Furniture Showroom have agreed with the use of the term “F.O.B. Dubuque” that the sale will occur there. Because of this, the sale of the furniture is subject to Dubuque County’s local option tax.

b. Taxation of property imported into a local option sales tax jurisdiction by a carrier. In the examples below (except for Example E), assume that the whole of Dubuque County, Iowa, has imposed a local option sales tax and that no portion of Polk County has imposed this tax. Further assume, unless otherwise noted, that any seller has the contacts (described in rule 107.8(422B)) with Dubuque County necessary for the county to require the seller to collect its local option sales tax.

EXAMPLE A. Company A is located in Dubuque County. The company orders a load of office furniture from Seller B located in Chicago, Illinois. Under the contract of sale, it is the obligation of B to place the furniture upon a carrier for transport to A. Chicago Transport picks up the furniture at B’s loading dock in Chicago. Under these circumstances, sale of the furniture took place when B transferred possession of the furniture to Chicago Transport. Since sale of the furniture occurred in Illinois, the sale of the furniture is not subject to the Dubuque County local option sales tax.

EXAMPLE B. Assume the same facts as in Example A except that the contract for sale of the furniture between A and B calls for delivery of the furniture “F.O.B. Dubuque County.” In this case, with the F.O.B. provision, the parties have agreed that sale of the furniture will occur in Dubuque County, Iowa. Thus, B is obligated to collect Dubuque County local option sales tax from A.

EXAMPLE C. Assume, again, that Company A is located in Dubuque County. However, for the purposes of this example, assume that Company B is located in Des Moines in Polk County, Iowa. A orders office furniture from B; shipment to Dubuque, Iowa, is by carrier with no mention of an F.O.B. point or any other indication of a delivery point in the contract between A and B for the sale of the furniture. In this case, sale occurred in Polk County when B placed the furniture in the hands of the carrier. B cannot collect Dubuque County local option sales tax from A.

EXAMPLE D. Assume the facts are as stated in Example C except that the contract between A and B specifies that delivery of the furniture shall be “F.O.B. Dubuque, Iowa.” In this case, B is obligated to collect Dubuque County local option sales tax.

EXAMPLE E. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson’s Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson’s Furniture House delivers the furniture to a common carrier for shipment F.O.B. Ms. Wilson’s home in Polk County. Since delivery (by virtue of the F.O.B. point) is in Polk County, that jurisdiction’s local option tax is imposed on the sale.

c. Taxation of exports from a jurisdiction imposing Iowa local option sales tax. Sales of property which a seller transfers to a carrier for subsequent shipment to a point outside Iowa are not subject to Iowa local option sales tax. This exemption does not apply if the property is subsequently returned to a point anywhere within Iowa (not only within the jurisdiction imposing the local option sales tax), unless the return is solely in the course of interstate commerce or transportation; nor does the exemption apply if the buyer or the buyer’s agent other than the carrier takes physical possession of the property within the jurisdiction imposing the local option sales tax. For additional material relating to this exemption see rule 701—17.8(422). For the purposes of this paragraph “c,” assume that the whole of Dubuque County imposes a local option sales tax, that Company B sells furniture and is located in Dubuque, Iowa, and that Company A is located outside Dubuque, Iowa.

EXAMPLE A. Company A is located in Chicago, Illinois. The company orders a load of office furniture from Company B. Under the contract for sale, transport of the furniture from Dubuque County to Chicago, Illinois, is by carrier with no F.O.B. point or other indication of a delivery point mentioned. Sale of the furniture occurs in Dubuque County because that is the point at which the seller transferred the furniture to the carrier transporting it. However, that sale is exempt from Dubuque County local option sales tax because Company B transferred the furniture to the carrier for shipment to a point outside Iowa (Chicago, Illinois) and the furniture was subsequently used there.

EXAMPLE B. Assume the same facts as in Example A except that Company A’s purchasing agent comes to Dubuque County, purchases the furniture there, takes possession of the furniture in Dubuque County and then arranges for a carrier to transport the furniture from Dubuque County to Chicago, Illinois. In this case, the exemption is not applicable and local option sales tax applies since the buyer (Company A) took possession of the furniture in Dubuque County prior to transferring the furniture to the carrier.

107.3(3) *Place of sale of tangible personal property in various special situations.*

a. The place of sale for sales from vending machines is the location of each individual vending machine. This is the point at which the property is delivered to the consumer.

b. The usual place of sales by an itinerant merchant or peddler or by a salesperson having a route is the customer’s home, business establishment, or any other point at which the itinerant peddler meets with a customer and solicits an order or completes a contract for sale. The point where the property which is the subject of the contract of sale is delivered is the point which determines if the local option sales tax is imposed.

EXAMPLE. A Super Sweep vacuum cleaner salesperson has a sales route which takes in most of Polk County, Iowa. Assume that local option sales tax is imposed only within the corporate boundaries of Polk City, Polk County. The salesperson travels to Polk City and enters into contracts for sales of vacuum cleaners to persons A, B, and C. Under the contract for sale with person A, the vacuum cleaner is immediately delivered from the salesperson’s truck to person A. Under the contract with person B, the vacuum cleaner will be delivered to that person’s home in Polk City at a later date. Under the contract with person C, the vacuum cleaner will be delivered, at a future date, to the home of that person’s mother in Des Moines. The gross receipts from the sales to persons A and B would be subject to local option sales tax, but not the gross receipts from the sale to person C.

c. If a person who purchases items for resale or processing withdraws those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of such items are subject

to local option sales tax if they are withdrawn within the area of a county in which the local option tax is imposed, regardless of where these items were purchased.

EXAMPLE. Assume that the whole of Polk County has a local option sales tax and Jasper County does not. Ms. Carver's home and furniture store are located in Polk County. In Jasper County she purchases five unfinished rocking chairs and the stain and varnish to finish them for sale. She gives the Jasper County retailer exemption certificates stating that the rockers are purchased for resale and the stain and varnish for use in processing. After returning to Polk County Ms. Carver finishes one rocking chair, and instead of selling it, uses it in her own home. Polk County local option sales tax is due upon the value of the rocker, stain, and varnish withdrawn and used.

107.3(4) *Sales of tangible personal property to contractors, contractor-retailers, and the use of property by the manufacturer as building material.*

a. Owners, contractors, subcontractors, or builders purchasing building materials, supplies, and equipment for the erection of buildings, or the alteration, repair, or improvement of real property are liable for payment of local option sales tax if they take delivery of any material, supplies, or equipment in that portion of a county in which the tax is imposed. Neither the place where the parties contract for sale, nor the place where the materials, supplies or equipment are stored or used is of importance in determining liability for the tax.

As of May 4, 1988, construction contractors may apply for refund of additional local option sales or service tax paid as a result of the imposition of or an increase in the rate of local option tax if the following circumstances exist:

(1) The additional tax was paid upon tangible personal property incorporated into an improvement to real estate in fulfillment of a written construction contract fully executed prior to the date local option sales tax is imposed or its rate increased, and

(2) The contractor has paid the full amount of both state and local option sales tax due to the department or to a retailer, and

(3) The claim is filed on forms provided by the department within six months of the date on which the contractor has paid the tax.

See rule 701—19.2(422,423) for a description of a similar right of refund applicable to state sales tax. The rule contains several examples useful in understanding this right of refund for local option tax paid. This local option tax right of refund is not applicable to equipment transferred under a mixed construction contract. See rule 701—19.9(422,423) for a description of a mixed construction contract and rule 701—19.10(422,423) for a description of “equipment.”

b. In the case of contractors, subcontractors, or builders who are also retailers (see rule 701—19.4(422,423) for a description of these persons) local option sales tax may be imposed by a county in which those persons withdraw building materials, supplies, and equipment from inventory for construction purposes or in which the property is delivered to users or consumers who have purchased it.

c. The use within any county of tangible personal property by that property's manufacturer, as building materials, supplies, or equipment in the performance of a construction contract, or for any purpose except for resale or processing is a sale at retail within the county by the manufacturer. The local option sales tax is computed upon the cost for the manufacturer of the fabrication or production of the materials, supplies, or equipment.